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OFFICE OF
INSURANCE COMMISSIONER

REPLY TO:
OLYMPIA OFFICE
INSURANCE BUILDING
OLYMPIA, WASHINGTON 98504
753-7300, AREA CODE 206

BULLETIN

No. 91-7

September 13, 1991

Subject: PROCUREMENT OF INSURANCE COVERAGES FROM UNAUTHORIZED INSURERS

Advertisements or solicitations from out of state, by or on behalf of unauthorized insurance companies, cause us to emphasize some basic laws which agents and brokers should understand.

As a general rule, insurance agents and brokers in our state are licensed to deal only with authorized insurance companies—those which have a Certificate of Authority from the insurance commissioner permitting them to transact insurance in Washington state. With few exceptions, an agent may represent only those authorized insurers from whom the agent has received an appointment. (Bulletin 90-1 discusses the licensing requirements and limitations for agents and brokers and the distinctions between them. Copies of that bulletin are available from the insurance commissioner's office.)

Three major restrictions are set forth in the insurance code with respect to unauthorized insurers, for which violators may be fined as much as \$25,000 and lose their insurance licenses:

1. An unauthorized insurer may not solicit insurance business in this state.
2. An unauthorized insurer may transact insurance business in this state only as provided in chapter 48.15 RCW, the surplus line law.
3. No person shall, in this state, represent an unauthorized insurer except as provided in chapter 48.15 RCW.

On the positive side, RCW 48.15.040 states that if certain coverages cannot be procured from authorized insurers, such coverages—designated as "surplus lines"—may be procured from unauthorized insurers subject to important conditions:

1. The insurance must be procured through a licensed surplus line broker.
2. A diligent, but unsuccessful, effort must first have been made to obtain the insurance from authorized insurers.

3. An unauthorized insurer must not be used to secure a lower premium rate than would be accepted by any authorized insurer.

4. The surplus line broker must execute and file an affidavit and is responsible for remittance of the premium tax.

A licensed surplus line broker may accept and place surplus line business for any insurance agent or broker licensed in this state for the kind of insurance involved and may compensate such agent or broker therefor.

Suppose an agent receives advertising from out of state that sounds good. He or she might want to sell the product but is not familiar with the insurance company. What should the agent do? First, determine if the insurer is authorized to do business in Washington state. If it is, he or she may decide to seek an appointment from the company to represent it as an agent.

If the insurer is not authorized, the agent may only procure the coverage through a licensed Washington state surplus line broker. The agent may not represent the unauthorized insurer nor solicit coverage on its behalf. That is the function of a surplus line broker.

Sometimes a customer will ask an agent about a solicitation for insurance that arrives in the mail or is advertised in a publication. The agent can provide a good service by assisting the individual in determining whether the insurance company is authorized to transact insurance in our state, and, if it is not, by cautioning the customer about the use of any unauthorized insurer that is not operating through a licensed surplus line broker.

Use of a surplus line broker will assure that the insurance company meets Washington state's financial requirements, that the insurance is not procurable from authorized insurers, and that the required paper-work will be filed and that the proper taxes will be remitted.

Agents and brokers should be careful to observe the laws relating to the use of unauthorized insurers. Participation in illegal transactions can place a license in jeopardy. Generally, the use of a surplus line broker to procure insurance from an unauthorized insurer will keep agents, brokers and insureds out of trouble.

DICK MARQUARDT
Insurance Commissioner